

~~CONFIDENTIAL~~ ATTACHMENTS
MEMORANDUM

NATIONAL SECURITY COUNCIL

Held for new revision
ACTION 432992

September 7, 1972
Held for new revision of Congress

MEMORANDUM FOR: DR. KISSINGER
FROM: MICHAEL A. GURIN
SUBJECT: Tear Gas-Herbicides and the Geneva Protocol

Per your request, the memorandum from you to the President at Tab 1 expresses your recommendation that we should not be willing to relinquish the option to initiate use of tear gas and herbicides in war and that the Senate's advice and consent to ratification of the Geneva Protocol should be sought only on that basis.

The memorandum also notes that we would so notify the Foreign Relations Committee of the President's decision after the election. (Since this option is expected to lead to continued deadlock between the Committee and the Administration, there is no advantage in pushing it now.)

As stated in my previous memorandum, the major implication of this position is that there will probably be no favorable Senate action on the Protocol and the US (the country which initiated and signed the Protocol in 1925) will remain the only important country not a party to it (there are 98 parties to the Protocol). Our failure to become a party could be used for political or propaganda purposes against us.

In addition, the Foreign Relations Committee may hold up action on the Biological Weapons Convention pending a resolution to its liking of the Protocol issue. (The Convention expressly recognizes the significance of the Protocol, reaffirms its objectives, and does not repeat its ban against use since many nations thought this would detract from the Protocol.) At some future time, Senate forces might muster enough votes against our position for a sense-of-the-Senate resolution to embarrass the Administration— but there is little likelihood that the Protocol would be brought to a vote until there were some agreement between the White House and the Foreign Relations Committee.

I still strongly believe that (1) ratification of the Protocol is a basic part of the President's initiatives in this area, (2) we should become a party to it, and (3), to this end, we should be willing to relinquish the first-use option on a reciprocal basis by agreeing to consider first use of tear gas and herbicides in war prohibited by the Protocol if and when a substantial

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majority (e. g. , three-quarters) of the parties officially confirm a reciprocal obligation. This would keep our present position on these two agents clearly intact for several months at the very least and not require any change unless a required majority officially agreed to a no-first-use policy.

There is no guarantee that the Foreign Relations Committee would agree to this formula; but here appears no chance of their accepting our present position.

Dick Kennedy concurs.

RECOMMENDATION:

If you still believe that we should stand firm in preserving the first-use option for tear gas and herbicides in war, that you forward the memorandum for the President at Tab 1.

Approve _____ (Have signed attached memorandum)

Alternatively, if you believe we should agree to relinquish the first-use option if a substantial majority of the parties officially confirm a reciprocal obligation, I will promptly prepare an appropriate memorandum for the President.

Approve _____

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

ACTION/32999CONFIDENTIAL/SECRET ATTACHMENTS

MEMORANDUM FOR: THE PRESIDENT

FROM: HENRY A. KISSINGER

SUBJECT: Tear Gas-Herbicides and the Geneva Protocol

In August 1970, you submitted the Protocol to prohibit the use of chemical and biological weapons to the Senate for its consent to ratification with the understanding that it does not prohibit first use of tear gas and herbicides in war.

The Foreign Relations Committee favors the Protocol but disagrees with our position on these two agents. In April 1971, Chairman Fulbright asked you to reconsider this position (letter at marked tab). There appears no prospect of favorable Senate action without some change in our stance.

We have now forwarded the Biological Weapons Convention to the Senate for its consent to ratification, and this may result in further questions regarding our position on the Protocol. (The Convention expressly recognizes the significance and reaffirms the objectives of the Protocol.)

There are two aspects of the problem. Militarily, do we wish to retain the first use option? Politically, how important is US ratification of the Protocol internationally and domestically? My summary of the completed inter-agency studies and agency positions on these questions is at marked tab.

Military Utility. Tear gas and herbicides have been militarily useful in Vietnam and have saved US and allied lives. Herbicides have been used to enhance aerial observation in forest areas and to clear vegetation along lines of communication and around bases. Tear gas is useful in many types of operations against an enemy with little protection (masks) or retaliatory capability. Tear gas is also a useful tool if the adversary is intermixed with civilians. The utility of these agents can be expected in analogous conflict situations with lesser powers.

The main military limitations on these agents are: Wide use of herbicides (except for base perimeters) requires aerial delivery, control of the air, minimal enemy anti-aircraft defenses and sufficient lack of enemy mobility. Tear gas effectiveness is significantly decreased if the enemy has adequate masks or a comparable retaliatory capability (e.g., all major powers).

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Political Factors. Failure to ratify the Protocol would deflate international and domestic expectations and could be used for political or propaganda purposes against us. We are the only important country not a party (there are 98 parties) to the Protocol. In addition, fifty-two parties (e.g., France, Spain, Pakistan, USSR and its allies) expressly disagree with our view on these agents. Japan, Australia, and Portugal side with us, and the UK sides with us on one type of tear gas (the type used in Vietnam). About thirty parties (e.g., other West Europeans) have not set forth positions.

Alternatives. Four alternatives are worth consideration. None would prohibit our right of retaliation in kind or the use in war of tear gas for riot control purposes and of herbicides in and around our bases (the extent of US operations in Vietnam today).

1. Preserve the First Use Option. This would allow us to use these agents in any future conflicts and in Vietnam, at the probable cost of no Senate consent to ratification of the Protocol and some international and domestic adverse criticism. Defense and the JCS strongly recommend this choice on grounds that use of these agents has saved lives and lessened casualties (military and civilian); tear gas has proved unique in special circumstances where other weapons proved ineffective; and herbicides have been vital for clearing vegetation along lines of communication.
2. Agree to a No First Use Policy toward States which Confirm a Reciprocal Commitment. This would give us the lead; significantly improve chances of getting Senate consent to ratify the Protocol; avoid any implication of previous error; and legally permit continued use in Vietnam unless Hanoi became a party, confirmed a reciprocal obligation and admitted its forces are in the South. On the other hand, this choice would preclude using these agents first against states which agree not to use them; make it difficult to justify initiating use against others; and, although most unlikely, Hanoi could take the above steps to stop US use. State and Dr. David recommend this choice.
3. Agree to a No First Use Policy If and When a Substantial Majority of the Parties (e.g., Three-Quarters) Confirms a Reciprocal Obligation. This would have essentially the same advantages as the preceding choice but would also avoid our having differing obligations toward different parties, and keep our present position clearly intact and permit continued use in Vietnam unless and until a substantial majority of the parties disagreed with us (which would take several months at the very least) and Hanoi became a party. On the other hand, if the above conditions were met, this would preclude our initiating use against parties to the Protocol and, if Hanoi became a party, US forces in Vietnam would lose the use of tear gas (except for riot control purposes) were we still in military operations. Although not included in the

interagency review, this choice would be as acceptable to State, Dr. David and ACDA as the preceding alternative.

4. Consider First Use to be Prohibited by the Protocol. This would best ensure Senate consent to ratification, and bring us into line with most of the parties to the Protocol. On the other hand, it would imply past improper conduct; could cause some difficulties for those allies and perhaps Senators who have sided with us; and would make it very difficult to justify continued use in or supply to Vietnam (except for the base herbicide operations). ACDA recommends this choice. ACDA takes State's view as a fallback position.

My Views. Tear gas and herbicides have proved useful in saving lives and lessening casualties in Vietnam in a variety of situations. Although their utility would be significantly decreased in conflicts with major or well-equipped powers, the military utility of these agents could be expected in conflicts similar to that in Vietnam. Moreover, I do not believe we should in any way risk our option to continue using tear gas in Vietnam even if that risk seems very small or several months away.

Therefore, I believe that we should preserve the first-use option by sticking to our position that the Protocol should be interpreted as not prohibiting first-use of these agents in war and, after November, we should so inform the Foreign Relations Committee. This would put the ball back in the Senate court. It is most unlikely that the Senate will act favorably on the Protocol with our interpretation and, therefore, the matter will probably remain deadlocked for the foreseeable future.

If you approve the recommendation, I will issue the appropriate instructions to State after November.

RECOMMENDATION:

That you approve our remaining firm on the position that we will not relinquish the option to initiate use of tear gas and herbicides in war and that Senate consent to our ratification of the Protocol should be sought on that basis only.

APPROVE _____ DISAPPROVE _____